

Filed for intro on 02/15/2001

SENATE BILL 1852
By McNally

AN ACT to amend Tennessee Code Annotated, Title 50; Title 56;
Title 67 and Title 71, relative to the taxation of entities
and persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding
Sections 2 to 15, of this act as a new part.

SECTION 2. The general assembly hereby declares that as a matter of public policy,
the primary source of health insurance for employed individuals should be an employer-
sponsored health insurance plan. Furthermore, the general assembly hereby declares that
such coverage should be available to the employer's employees who are employed in
Tennessee, their spouses and dependents.

SECTION 3. The title of this part is, and may be cited as, the "Tennessee Employer Health Care Responsibility Tax".

SECTION 4. As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of revenue.

(2) "Department" means the department of revenue.

(3) "Employee" means an employee of the employer for the purposes of Tennessee Code Annotated, Title 50, Chapter 7. The commissioner of revenue is authorized to set criteria for determining full-time employment.

(4) "Employer" means any employer subject to the provisions of Tennessee Code Annotated, Title 50, Chapter 7, subject to requirements of Section 13 of this part. In no event shall "employer" include an entity with fewer than twenty-five (25) employees.

SECTION 5. In addition to any other privilege tax imposed by this chapter, the general assembly declares that it is a taxable privilege in this state for an employer to engage in business and to use employees in such business.

SECTION 6. The tax herein imposed is a state tax for state purposes only and no county or municipality or taxing district shall have power to levy any like tax. The tax is an accrued tax and is imposed for the exercise of the specified privilege during the period that coincides with the tax year covered by the required return. The privilege tax established in this part shall be collected by the commissioner of revenue and deposited to the state general fund.

SECTION 7.

(a) The supervision and collection of the tax imposed by this part is under the direction of the department of revenue, and the department has the authority and power to prescribe forms upon which entities liable for the tax imposed shall make reports of

such facts and information as will enable the commissioner to ascertain the correctness of the amount reported and paid by such entities.

(b) The commissioner may, within the commissioner's discretion, require any taxpayer to file with its Tennessee franchise tax return, a copy of the federal tax forms filed with the internal revenue service for the same tax year.

(c) All employers subject to the tax imposed by this part shall register with the department of revenue by completing and filing a registration information form prescribed by the department. Such form shall be filed with the department within sixty (60) days after January 1, 2002, or within fifteen (15) days after the date the employer becomes subject to the tax, whichever date occurs last.

SECTION 8. The privilege tax hereby imposed on all taxpayers shall be one thousand two hundred dollars (\$1,200) per year for each full-time employee in Tennessee at the close of the tax year covered by the required return. The department is authorized to develop by rule a means for employers to make estimated periodic payments of the tax on a monthly or quarterly basis and to provide for additional payments, refunds or penalties with the filing of the required return. Credits against any tax imposed by this section shall be pursuant to Section 12 of this part.

SECTION 9.

(a) In addition to the tax imposed by Section 8, there is also imposed a privilege tax on all taxpayers equal to the annual value of TennCare capitation payments for an individual during the applicable tax year for all employees who:

(1) Are offered and who refuse adequate health insurance offered by the employer; and

(2) Are known by the employer to be enrollees in the TennCare program, at the close of the tax year covered by the required return.

(b)

(1) An employer may deduct the cost of such tax from the employee's compensation unless otherwise prohibited from doing so by law.

(2) If the provisions of subdivision (b)(1) of this section or the application thereof to any person or circumstance is held invalid or not permitted by federal law, then all provisions and applications of this section are declared to be invalid and void.

(c) As used in this section, "adequate health insurance coverage" means a health insurance plan determined by the department of commerce and insurance to be equal or superior to the benefits provided through the standard health care plan established through the Small Employer Group Health Coverage Act, compiled in Title 56, Chapter 7, Part 22. "Adequate health insurance coverage" shall also include compliance with the provisions of the Tennessee Health Insurance Portability, Availability and Renewability Act and the federal Health Insurance Portability and Accountability Act of 1996.

SECTION 10. The department may authorize any filings required by this part to be attached to an employer's franchise and excise tax returns.

SECTION 11. The privilege tax return required by this part shall be filed in the same manner as provided in § 67-4-2015 for franchise and excise tax returns.

SECTION 12.

(a) The commissioner is empowered to certify to the secretary of state the name of any taxpayer who fails or refuses to file any statement or tax return required by this part, or to pay any fee or tax herein required. No certification shall be issued until such statement, return, or tax has remained delinquent for a period of ninety (90) days.

(b) At the time of such certification to the secretary of state, the commissioner shall give notice to the taxpayer of the action taken. Thereupon, the charter or certificate of such taxpayer or its domestication in Tennessee shall stand as automatically

dissolved or revoked, and the secretary of state shall note such revocation or dissolution upon the secretary of state's records.

(c) At any time after the date of revocation or dissolution, such charter or certificate or domestication may be reinstated upon the filing of all reports and the payment of all fees, taxes, penalty and interest due the state; provided, that the title has not been taken by another taxpayer.

SECTION 13.

(a) There shall be allowed a credit for any taxpayer against the tax imposed under Sections 6 and 8 for any tax year, in an amount equal to the total expenditures paid or incurred by such taxpayer in such tax year for health care costs or health insurance coverage for each full-time employee. In no event may such credit exceed one thousand two hundred dollars (\$1,200) per employee per year.

(b) The commissioner is authorized to develop rules for allocating an employer's costs relating to health care or health insurance coverage on a per employee basis.

SECTION 14. The provisions of this part shall apply on and after January 1, 2002 to all employers with two hundred (200) or more employees in Tennessee. The provisions of this part shall apply on and after January 1, 2003 to all employers with one hundred (100) or more employees in Tennessee. The provisions of this part shall apply on and after January 1, 2004 to all employers with twenty-five (25) employees or more in Tennessee.

SECTION 15. The commissioner of revenue is authorized to promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 16. Tennessee Code Annotated, Section 56-4-205(a)(1)(A), is amended by adding the following new language at the end of the subdivision:

In addition to the above premium taxes, all insurers, medical service plans, hospital service corporations and hospital and medical service corporations offering health insurance in this state, shall pay tax on the gross amount of all dollars collected from an enrollee or on the enrollees behalf in the amount of one percent (1%). This additional one percent (1%) premium tax shall not apply to any insurance company, medical service plan, hospital service corporation, or hospital and medical service corporation that sponsors a TennCare managed care organization which represents twenty-five percent (25%) of the entity's health care

enrollment or totals at least two hundred thousand (200,000) lives. This additional one percent (1%) premium tax shall not be due and payable during any period when the state's TennCare program is no longer in operation.

SECTION 17. Tennessee Code Annotated, Section 56-32-224(a), is amended by adding the following new language at the end of this subsection:

In addition to the above premium taxes, all health maintenance organizations in this state, shall pay tax on the gross amount of all dollars collected from an enrollee or on the enrollees behalf in the amount of one percent (1%). This additional one percent (1%) premium tax shall not apply to any health maintenance organization that sponsors a TennCare managed care organization which represents forty percent (40%) of the health maintenance organization's enrollment or totals at least fifty thousand (50,000) lives. This additional one percent (1%) premium tax shall not be due and payable during any period when the state's TennCare program is no longer in operation.

SECTION 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 19. This act shall take effect on becoming a law for the purpose of developing rules and regulations and for all other purposes on January 1, 2002, the public welfare requiring it.